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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 DYLAN CORRAL,	}	Case No. 2:23-cv-05402-CAS-JDE
12 Plaintiff,		
13 v.		ORDER DISMISSING ACTION
14 JOHN/JANE DOES 1-5000,		PURSUANT TO 28 U.S.C. § 1915(g)
15 Defendants.		
16	}	

17
18 On June 30, 2023, the Court received from Dylan Corral (“Plaintiff”), an
19 inmate or detainee at the Sacramento County Jail in Sacramento, California,
20 proceeding pro se and without paying a filing fee or seeking leave to proceed in
21 forma pauperis (“IFP”), a civil rights complaint under 42 U.S.C. § 1983
22 against unidentified Doe defendants based on events that allegedly occurred at
23 California State Prison, Los Angeles County (“LAC”) while Plaintiff was
24 incarcerated there in 2019. Dkt. 1 (“Complaint”).

25 On July 10, 2023, the magistrate judge issued an Order finding that it
26 appeared Plaintiff had suffered three prior “strikes” and had not alleged he was
27 currently under imminent danger of serious physical injury and ordering
28 Plaintiff to show cause in writing why the action should not be dismissed

1 under 28 U.S.C. § 1915(g), or alternatively, pay the full filing fee. Dkt. 4
 2 (“OSC”). On July 31, 2023, Plaintiff filed a Response to the OSC (Dkt. 5,
 3 “Response”) and request to proceed IFP (Dkt. 6).

4 Pursuant 28 U.S.C. § 1915(g), a prisoner is prohibited from “bring[ing] a
 5 civil action or appeal” IFP if the prisoner:

6 has, on 3 or more prior occasions, while incarcerated or detained
 7 in any facility, brought an action or appeal in a court of the United
 8 States that was dismissed on the grounds that it is frivolous,
 9 malicious, or fails to state a claim upon which relief may be
 10 granted, unless the prisoner is under imminent danger of serious
 11 physical injury.

12 Section 1915(g) “is commonly known as the ‘three strikes’ provision. ‘Strikes’
 13 are prior cases or appeals, brought while the plaintiff was a prisoner, which
 14 were dismissed ‘on the ground that[they were] frivolous, malicious, or fail[] to
 15 state a claim’ Andrews v. King, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005)
 16 (as amended) (first two alterations in original). Section 1915(g) provides a
 17 narrow exception permitting a prisoner who has had three prior “strikes” but
 18 who is in “imminent danger of serious physical injury” to proceed despite the
 19 strikes. 28 U.S.C. § 1915(g); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th
 20 Cir. 2000) (en banc). The danger must exist at the time the prisoner filed the
 21 complaint, not at some earlier or later time. Andrews v. Cervantes, 493 F.3d
 22 1047, 1053 (9th Cir. 2007) (as amended).

23 Courts may raise Section 1915(g) sua sponte and dismiss the action after
 24 providing the plaintiff notice of the three cases that it finds constitute strikes.
 25 See Ray v. Lara, 31 F.4th 692, 697 (9th Cir. 2022); see also Fabricant v.
 26 Harbison, 2021 WL 5921470, at *2 (C.D. Cal. Sept. 1, 2021) (“Courts may
 27 raise § 1915(g) sua sponte.”), accepted by 2022 WL 103187 (C.D. Cal. Jan. 11,
 28 2022). “A dismissal under Section 1915(g) is without prejudice to a plaintiff

1 refiling his civil rights complaint after prepayment of the full filing fee.”

2 Hernandez v. Ventura Cty., 2010 WL 5313476, at *2 (C.D. Cal. Nov. 16,
3 2010), adopted by 2010 WL 5315438 (C.D. Cal. Dec. 15, 2010).

4 Here, court records, of which this Court takes judicial notice, reflect at
5 least three prior civil actions filed by Plaintiff while incarcerated that resulted
6 in dismissal for being frivolous, malicious, or failing to state a claim upon
7 which relief may be granted:

- 8 1. Dylan Corral v. Lt. Bouldin, et al., No. 2:18-cv-1629-TLN-CKD
9 (E.D. Cal. Jan. 13, 2020) (“First Action”) (Dkt. 36, 37) (dismissing
10 Plaintiff’s second amended complaint for “failure to state a claim
11 upon which relief can be granted”).
- 12 2. Dylan Corral v. Cpl. Sullivan, No. 2:18-cv-01843-KJM-CKD
13 (E.D. Cal. Mar. 17, 2020) (“Second Action”) (Dkt. 32, 33)
14 (dismissing Plaintiff’s second amended complaint for “failure to
15 state a claim upon which relief can be granted”).
- 16 3. Dylan Corral v. Corporal Martinez, et al., No. 2:19-cv-00859-
17 JAM-KJN (E.D. Cal. July 27, 2020) (“Third Action”) (Dkt. 9, 21-
18 24) (dismissing complaint for failure to state “a potentially
19 colorable due process claim”).¹

20 As Plaintiff, a “prisoner,” has had at least three prior civil actions he
21 commenced as a prisoner dismissed as frivolous, malicious, or for failing to
22 state a claim upon which relief may be granted, this action is subject to

23
24 ¹ The district court affirmed the magistrate judge’s dismissal of Plaintiff’s
25 complaint, granting leave to amend by a certain date, (see Third Action, Dkt. 9, 21),
26 but Plaintiff did not do so. See Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir.
27 2017) (holding that “when (1) a district court dismisses a complaint on the ground
28 that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff
then fails to file an amended complaint, the dismissal counts as a strike under Section
1915(g)”).

1 dismissal under 28 U.S.C. § 1915(g). Further, as Plaintiff is no longer housed
2 at LAC, he is not currently under imminent danger of serious physical injury
3 stemming from the allegations in the Complaint.

4 In his Response, Plaintiff objects to the dismissal of this action, claiming
5 his Fourteenth Amendment due process rights were violated and none of his
6 prior actions should qualify as a strike because: (1) he was “never afforded the
7 opportunity to amend his complaint” in the Third Action as he never received
8 the April 22, 2020 order due to prison tampering; (2) prison officials seized his
9 legal property on or about June 2, 2019, “chilling Plaintiff[']s efforts to litigate
10 in all cases . . . in which [he] could have prevailed by amending the complaints
11 or on appeal”; (3) the Third Action “stems from [a] similar set of facts” as in
12 the First Action, but they had to be separated into two lawsuits “due to a 25
13 page limit per Complaint”; (4) prison officials “drugged” Plaintiff starting in
14 May 2019 “to make Plaintiff lethargic and to force [him] to forfeit his legal
15 claims”; and (5) he was hospitalized at California Health Care Facility
16 (“CHCF”) from October 2019 to June 2022 and “mentally incapacitated at all
17 times of each dismissal of each case.” See Response at 1-3, 9-11.

18 However, Plaintiff may not avoid the consequences of the prior actions
19 through an untimely collateral attack. See Hoffmann v. Pulido, 928 F.3d 1147,
20 1150-51 (9th Cir. 2019) (concluding the plaintiff could not escape the
21 consequences of a prior judgment by arguing that the magistrate judge in the
22 prior action lacked authority to dismiss the complaint). The Supreme Court
23 “has long recognized that collateral attacks are disfavored” as they “run afoul
24 of the court’s strong interests in the finality of judgments.” Id. at 1150. Such
25 challenges must be raised in the initial action while the case is still pending;
26 “they may not be raised for the first time by way of collateral challenge in a
27 subsequent action.” Id. (quoting City of S. Pasadena v. Mineta, 284 F.3d 1154,
28 1157 (9th Cir. 2002)). Although Federal Rule of Civil Procedure 60(b)(4)

allows for final judgments to be declared void in some circumstances, Plaintiff makes no argument that the prior judgments fall within the “narrowly circumscribed set of void judgments” that “lack[ed] even a colorable basis” for jurisdiction.” *Id.* at 1151 (citing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010); *Jones v. Giles*, 741 F.2d 245, 248 (9th Cir. 1984)).

Plaintiff was aware of the three strikes issue and raised the issue in all three prior actions. Yet, he never raised the arguments he now asserts. In each of the three prior actions, on October 29, 2020, Plaintiff filed the identical document, stating, in its entirety:

Clerk of the Court –

I am wanting to know if I have 3 strikes under the Prison Litigation Reform Act 1915(g).

I have 3 dismissals in case #'s:

2:18-cv-1629 TLN CKD (PC)

2:18-cv-1843 KJM CKD (PC)

2:19-cv-0859 JAM KJN (PC)

Please let me know [¶] Thank you

First Action, Dkt. 38; Second Action, Dkt. 34; Third Action, Dkt. 25 (“Request”). Plaintiff received no response and made no further inquiries. As such, Plaintiff may not collaterally attack the earlier actions through this action in order to avoid the application of Section 1915(g).

Further, factually, Plaintiff’s claims are belied by the record in the prior actions. Plaintiff first argues that the Third Action should not count as a strike as he was unable to amend his complaint because he never received the April 22, 2020 order due to prison officials tampering with his legal mail in violation of his Fourteenth Amendment rights. Response at 3-4. In the Third Action, the magistrate judge issued an order on September 13, 2019 finding the complaint failed to state a potentially colorable due process claim and dismissed the

1 complaint with leave to amend. Third Action, Dkt. 9. Thereafter, Plaintiff
2 requested, and was granted, three extensions of time to file objections. Id.,
3 Dkt. 13-16, 18-19. The court's last order, in November 2019, expressly granted
4 Plaintiff additional time to file an amended complaint or objections. Id., Dkt.
5 19. On December 13, 2019, Plaintiff filed objections, substantively addressing
6 the magistrate judge's September order. Id., Dkt. 20. Thereafter, on April 22,
7 2020, the district judge affirmed the September order and granted Plaintiff 45
8 days to file an amended complaint. Id., Dkt. 21. This is apparently the order
9 Plaintiff claims he never received. But, prior to the April 2020 order, Plaintiff
10 had been notified on at least two occasions of the right to file an amended
11 complaint and he received further notice when the magistrate judge issued
12 findings and recommendations on June 16, 2020, recommending that the
13 action be dismissed when Plaintiff failed to file an amended complaint or
14 otherwise respond to the court's order. See id., Dkt. 22. Plaintiff does not claim
15 he never received these other orders or the recommendation and he never
16 raised the issue in his Request, which otherwise acknowledged the action had
17 been dismissed and may constitute a strike. As such, Plaintiff cannot avoid a
18 strike based on his alleged inability to amend his complaint.

19 Plaintiff further contends that the Third Action should not qualify as a
20 strike for the additional reason that the First and Third Actions had to be filed
21 as two separate actions due to a 25-page limit local rule. Response at 7-8.
22 Plaintiff does not provide any citation to this Eastern District of California
23 Local Civil Rule. In any event, Plaintiff never requested to file a complaint in
24 excess of this page limit in the First Action and, in fact, the record reflects that
25 the initial complaint was only 14 pages, well short of the purported 25-page
26 limit. Despite his belated contentions that the two cases were based on a
27 "similar set of facts" and should have been filed as one action, Plaintiff never
28 raised this issue in the First Action and instead, filed the Third Action almost a

1 year later. Further, although both actions relate to disciplinary proceedings,
2 with only two possible exceptions, the two actions challenge different
3 proceedings. In sum, there is no basis to conclude the First and Third Actions
4 should constitute only one strike.

5 Next, Plaintiff contends that his legal property was seized in June 2019,
6 “chill[ing]” his efforts to litigate all cases, erroneously causing them to be
7 dismissed for failure to state a claim. He maintains the deprivation of his legal
8 property caused him to receive three strikes because he was unable to file an
9 amended complaint in the Third Action or appeal in all three actions.

10 Response at 4-7. This is the only issue that was even tangentially raised in his
11 prior actions, but the records reflect that he was afforded additional time each
12 time he alerted the courts that he did not have access to his legal property. In
13 the First and Second Actions, he requested extensions of time to file amended
14 complaints because he had not received his legal property following a prison
15 transfer in February 2019. He also filed two motions to compel in the First
16 Action, which were denied. His requests for extensions of time, however, were
17 granted and he continued to litigate both actions without ever alerting the
18 courts that his legal property was later seized in June 2019 or requesting any
19 relief as a result. See First Action, Dkt. 18-20, 22-25; Second Action, Dkt. 17-
20 18, 20-21. In the Third Action, Plaintiff notified the court in October and
21 November 2019 that he did not have his legal property. His requests for
22 extensions were granted and the court requested the litigation coordinator at
23 CHCF to assist him in obtaining access to his legal materials. Third Action,
24 Dkt. 15-16, 18-19. Plaintiff thereafter filed substantive objections on December
25 13, 2019, citing the magistrate judge’s order and legal authority, with specific
26 details regarding his claims, and never alerting the court that there was any
27 ongoing issues regarding his legal property. Id., Dkt. 20. As to all three actions,
28 despite repeatedly seeking relief when he lacked access his legal property, he

1 never claimed he was being prevented from filing an appeal. The records in the
2 prior actions do not support Plaintiff's contention that he was prevented from
3 pursuing these cases based on the seizure of his legal property.

4 Similarly, to the extent Plaintiff claims he was unable to amend and/or
5 appeal the prior actions because he was drugged in May 2019, hospitalized at
6 CHCF from October 2019 to June 2022, and mentally incapacitated at the
7 time of the dismissal orders (Response at 8-10), nothing in the record from
8 Plaintiff's prior actions reflect these issues prevented him from pursuing his
9 legal claims. During these periods, Plaintiff actively litigated the prior actions,
10 as well as several others. He filed coherent objections, notices of change of
11 address, requests for extensions, a motion to disqualify the magistrate judge, a
12 request to proceed IFP, and even engaged in a settlement conference in
13 another matter. See, e.g., First Action, Dkt. 31-33, 35; Second Action, Dkt.
14 27-29, 31; Third Action, Dkt. 6, 7, 13, 15, 17, 18, 20; see also generally Corral
15 v. Warren, et al., Case No. 2:18-cv-00024-TLN-CKD (E.D. Cal.); Corral v.
16 Woodman, Case No. 2:18-cv-01769-KJM-DMC (E.D. Cal.); Corral v.
17 Melgarejo, et al., Case No. 2:18-cv-03019-JAM-DMC (E.D. Cal.). The Court
18 finds no merit to Plaintiff's contention that he was unable to amend and/or
19 appeal the prior actions due to being drugged, hospitalized, and/or mentally
20 incapacitated. In sum, the Court finds all three prior actions qualify as strikes.

21 Accordingly, as Plaintiff, a "prisoner," has had at least three prior civil
22 actions he commenced as a prisoner dismissed as frivolous, malicious, or for
23 failing to state a claim upon which relief may be granted, and is not in
24 imminent danger of serious physical injury that is fairly traceable to the
25 unlawful conduct alleged in the Complaint, this action must be dismissed
26 under 28 U.S.C. § 1915(g).

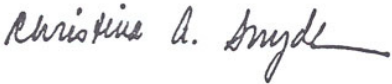
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Accordingly, IT IS HEREBY ORDERED THAT:

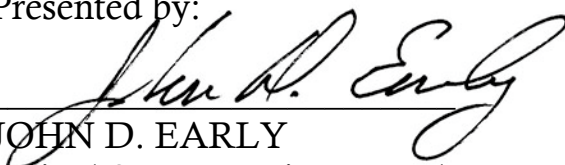
1. Plaintiff's Complaint is DISMISSED without prejudice to refileing after prepayment of the full filing fee; and
2. Judgment shall be entered accordingly.

Dated: August 4, 2023



CHRISTINA A. SNYDER
United States District Judge

Presented by:



JOHN D. EARLY
United States Magistrate Judge